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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------------|
| 10/598,756 | 06/29/2007 | Torgeir Hamsund | HAMS/0005 | 9877 |
| 26290 7590 07/08/2009 PATTERSON & SHERIDAN, L.L.P. 3040 POST OAK BOULEVARD SUITE 1500 HOUSTON, TX 77056 | | | EXAMINER LACYK, JOHN P | |
| | | | ART UNIT 3735 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/598,756 | Applicant(s) HAMSUND, TORGEIR | |
| | Examiner John P. Lacyk | Art Unit 3735 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,16,17,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-14,16,17,20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/29/09 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 9-14, 16-17 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamsund (6,511,414) in view of Franz (5,707,337).

Hamsund '414 teaches an incubator (fig. 1, 2) comprising a top section (1, 2) and a base section (9, 15). The top section (1, 2) comprises an outer hemispherical shield (1) in a transparent material and an inner hemispherical shell (2) cut open at the top.

Between the shells there is an airflow chamber. The infant lies inside a chamber (23) defined by the top section (1, 2) and the base section (9, 15), and preferably lies on a bottom board (10) (col. 2, lines 40-50).

Portholes (20) in the top section allow the infant to be cared for and pass through both the outer shell and the inner shell.

Air is supplied to the chamber (23) through air supply pipe (11) and duct (8) in the base section and flows out into the chamber (23) from the ducts (8) between the base section

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and the bottom board (10), up along the edges of the bottom board and on the inside of the inner shell, ensuring that a constant adequate flow of fresh air to the infant lying in the incubator (col. 2, lines 57-65). A supply duct (18) for the supply of fresh, optionally oxygen-enriched, air to the incubator is provided with the bottom member and will replace any air which might leak out the incubator (col. 3, lines 25-33).

A valve (19) closes the air outlet pipe (12) and opens the supply duct (18) when one or more of the covers (22) are opened. The valve (19) can be maneuvered in response to the opening of one or more covers by means of a micro-switch in connections with the doors (22), or with the aid of sensors. The incubator then has a small overpressure in the chamber (23) relative to the surroundings to ensure that cold and possibly impure air is not drawn into the incubator through open portholes (20) (col. 3, lines 45-60).

Hamsund discloses the claimed device except for the direction of the airflow or the airflow chamber supplying the incubator chamber with air via flow chamber to an upper portion of the chamber and exits a lower portion adjacent the bed rest. Franz discloses a similar incubator and teaches that it is well known to provide a cover having an outer shell (2) and an inner shell (4) that forms an airflow chamber (3) to an air flow aperture; a platform and bed rest (6, 7); and a ventilation aggregate for circulating airflow to enter an upper portion and exit a lower portion adjacent the bed rest (Figure 2).

Therefore a modification of Hamsund such that the air flows from the ventilation aggregate through an airflow chamber into the upper portion of the chamber and exits through a lower portion of the chamber adjacent the bed rest instead of the other way

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around would have been obvious to one skilled in the art since this would have been a mere modification of the direction of air flow and Franz teaches that it is well known to allow the airflow to flow up along an outer chamber into an upper portion of the incubator chamber and exit from a lower portion adjacent a bed rest.

Hamsund '414 teaches an incubator that comprises a swivel in the junction between the pipes and the supporting member. The bottom board may be fixedly mounted on the supporting member and is rotatable to facilitate access to and care of the infant without having to open more portholes than necessary. The possibility of rotating the bottom board, and thus the infant, is of great importance for the best possible access to the infant during routine nursing and care. The board can be rotated manually by the attending person by inserting their hands into the openings and turning the board with their hands. If desired the incubator may be equipped with a locking device which prevents the bottom board from turning unintentionally, or may comprise a motor for automatic rotation without the need to open the incubator (col. 4, lines 33-60).

Hamsund '414 discloses the claimed invention except that the bottom board supporting the infant is rotatable relative to the cover, instead of the cover being rotatable relative to the platform. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the cover with a swivel instead of (or in addition to) the platform in order to more easily attend to the infant from any location of the incubator, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamsund in view of Franz as applied to claims above, and further in view of Paschal, Jr. et al (6,418,932).

Hamsund '414 teaches a device for an incubator comprising a circular platform, ventilation aggregate and a cover, and a chamber designed to receive air from ventilation via a duct and airflow apertures. The incubator of Hamsund '414 however fails to disclose at least five nursing openings.

Paschal '932 teaches an isolation pod for an individual comprising air intake and exhaust ports and valves for unidirectional filtered-air flow. The isolation pod also comprises a plurality of ported isolation gloves. The gloves (19) located in the multitude of port openings (fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form an infant incubator similar to that of Hamsund '414 with five portals that provide access to a patient, similar to the plurality of Paschal '932, to provide for an incubation device that has multiple access points in order to allow for patient treatment without exposure of the patient to the ambient environment.

Claim 14 is objected to because of the following informalities: It appears that claim 14 should depend from claim 13 in that it defines "the planar portion" which is not defined until claim 13. Appropriate correction is required.

Applicant's arguments filed 6/29/09 have been fully considered but they are not persuasive. Applicant argues that claim 1 includes an airflow chamber between an outer and inner shell wherein the airflow chamber is designed to supply an incubator chamber with air via air flow apertures formed in the inner shell. Claim 10 includes an airflow chamber configured such that a turbulent flow is created within the airflow chamber to mix inflowing ventilation air with airflow in the airflow chamber and claim 17, that the airflow chamber and plurality of apertures are configured to ensure the mixing. As discussed in the above rejection Hamsund discloses the claimed device except for the air flowing in the opposite direction, while Franz discloses that it is known to provide the air flowing into the incubator chamber from the top, both Hamsund and Franz disclose an airflow chamber between an outer and inner shell having an aperture at the top of the inner shell. Also as discussed above, Franz teaches an airflow chamber between the two shells which provides an airflow up through the airflow chamber and out through the aperture at the top into the incubator chamber. The combination as discussed in the rejection would meet the limitations of claim 1. With respect to the mixing of the air flowing into the incubator chamber, the Franz device would inherently mix any air flowing through the airflow chamber as it is sent up through the airflow chamber to the top of the device. The claim includes no specific structure that would cause any specific airflow, all that is claimed is an outer shell and an inner shell to provide an airflow chamber in between, which is clearly shown in the art. Further with respect to claim 17 there is no support in the specification for the apertures causing the mixing of the

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airflow, the specification discloses that the air is mixed and then flows through the apertures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Lacyk whose telephone number is (571)272-4728. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chuck Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

J.P. Lacyk

/John P Lacyk/
Primary Examiner, Art Unit 3735